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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 7.2.2006

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

T.C.Nos.94 and 95 of 2002

The Lakshmi Vilas Bank Ltd
Salem Road
Kathaparai, Karur. .. Applicant

Vs

The Commissioner of Income Tax
Tamil Nadu-V
Chennai. .. Respondent

PRAYER: Tax case references at the instance of the assessee against the order of the Income Tax Appellate Tribunal, Chennai "B' Bench Chennai dated 30.4.1997 and 30.7.1997 in I.T.A.Nos.4109 and 1290 (Mds)/1989 for the assessment years 1986-87 and 1985-86 R.A. Nos.443 & 690 (Mds) 1997 against IT Appeal No.22/88-89 order dated 20.1.89 for the assessment year 1985-86 on the file of the Office of the Commissioner of Income Tax (Appeal) Madurai Range, Madurai and IT Appeal No.43/89-90 order dated 13.7.89 for the assessment year 1986-87 on the file of the Office of the Commissioner of Income Tax (Appeals) VIII, Madras -34 and 47-012-CQ-0362/85-86 order dated 29.1.88 for the assessment year 1985-86 on the file of the Inspecting Asst. Commissioner of Income Tax (Assessment) Range II, Madurai and 0362/DO8R/86-87 order dated 20.2.89 for the assessment year 1986-87 on the file of the Dy. Commissioner, Spl. Range, Trichy.

For Applicant : Mrs.T.C.A.Sangeetha
For Respondent : Mr.N.Muralikumaran
Senior Standing Counsel
for Income Tax

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JUDGMENT

(Delivered by P.P.S.JANARTHANA RAJA,J.)

At the instance of the assessee, the Income Tax Tribunal has stated a case and referred the following questions of law to this Court for its opinion:

"1. Whether on the facts and in the circumstances of the case the Tribunal was correct in holding the Government Securities held by the applicant as investments/capital asset and not circulating capital/stock-in-trade?

2. Whether on the facts and in the circumstances of the case the Tribunal was correct in holding that the decision of the Supreme Court in the case of Madhya Pradesh Co-op Bank Ltd. Vs. Addl. CIT and Mahdya Pradesh Rajya Sahkari Bank Maryadit Vs. CIT (218 ITR 438) and the various decisions referred to in its order for the assessment years 1985-86 and 1986-87 would be applicable to the applicant's case?

3. Whether on the facts and in the circumstances of the case the Tribunal was justified in not following the orders of the Tribunal in the applicant's own case for the earlier years under exactly identical circumstances?

4. Whether on the facts and in the circumstances of the case the Tribunal was correct in holding that holding of investment by banking companies is always capital in nature and capital assets?

5. Whether on the facts and in the circumstances of the case the Tribunal was correct in holding that in respect of banks the investments in Government Securities were always part of the Reserve Funds not be used as part of its working capital?"

2. The facts leading to the above questions of law are as under:

The assessment years involved are 1986-87 and 1985-86. The assessee is a scheduled bank carrying on banking business. For the said assessment years, the assessee-bank was holding Government Securities as stock-in-trade. The market value of the securities was less than the cost. While computing the taxable income the fall in the market value was claimed as a deduction, which was not allowed by the Assessing Officer. Aggrieved by the said order of the Assessing Officer, the assessee filed an appeal before the Commissioner, who allowed the case of the assessee. Against the said order, the Revenue filed an appeal before the Tribunal and the Tribunal held that the assessee was holding Government securities

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as investments and not as stock-in-trade and thus, allowed the Department's appeals.

3. The learned counsel for the assessee contended that once the assessee had been holding the investments as trading stock, the assessee is entitled to the loss on account of revaluation, whether written off in the books or not the same has to be allowed. The learned counsel relied on the decision of this Court in CIT Vs. KARUR VYSYA BANK LTD., [2005] 273 ITR 510. The learned Senior standing counsel for the Department submitted that the assessee-bank held the Government Securities only as investment and therefore, they are not entitled to any relief.

4. We have given careful consideration to the submissions of both sides. It is brought to the notice of this Court that the assessee is also dealing with purchase and sale of Government Securities. The profit and loss on the sale of Government securities had been assessed as business income/loss under the Income Tax Act. The assessee bank has always been treating Government securities as stock in trade. It is further brought to our notice that whenever there is depreciation/appreciation in the value of the securities, at the end of each accounting year, the same had been claimed as deduction/offered as income of the relevant year, while computing income taxable under the Income Tax Act. There is no change of method of accounting of the Securities since the assessment year 1976-77. It is also brought to our notice that for the earlier assessment years, the Revenue had accepted the plea of the assessee that the Government Securities are stock-in-trade and against the earlier orders, the Revenue did not agitate by filing an appeal and therefore, the same reached finality. Hence, it is too late in the day to raise this issue when regard is had particularly to the fact that the assessee's method of treating the Government Securities as stock-in-trade had all along been accepted by the Department. The said view is supported with the decision of the Supreme Court in Union of India Vs. Kaumudini Narayan Dalal, 249 ITR 219; Collector of Central Excise, Hyderabad Vs. Divya Enterprises Ltd., (2003) 9 SCC 222; and Collector of Central Excise Vs. Tata Engineering and Locomotive Company Ltd., 2003 (11) SCC 193, wherein it has been consistently held that after having refrained from challenging the adverse decision of the Tribunal/High Court, the Revenue is not entitled to challenge the same.

5. The Revenue relied on the decision of the Supreme Court in Madhya Pradesh Co-operative Bank Ltd. Vs. Additional Commissioner of Income-tax and Madhya Pradesh Rajya Sahkari Bank Maryadit Vs. Commissioner of Income-tax [1996] 218 ITR 438. In that case, the Bank was holding Government securities as investments and not stock-in-trade. Based on this fact, the Supreme Court came to the conclusion that the fall in the market value of the Government

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Securities is not an allowable deduction and hence, the same would not apply to the facts of this case. The said Supreme Court judgment was later on considered by the Supreme Court in Commissioner of Income-tax Vs. Karnataka State Co-operative Apex Bank, [2001] 251 ITR 194, wherein it was held that the said decision of the Supreme Court reported in [1996] 218 ITR 438 does not set down the correct law and the relevant portion of the said judgment reads as under:

> ".. The question is whether we agree with the reasoning in Madhya Pradesh Co-operative Bank Ltd. [1996] 218 ITR 438 (SC). There is no doubt, and it is not disputed, that the assessee-co-operative bank is required to place a part of its funds with the State Bank or the Reserve Bank of India to enable it to carry on its banking business. This being so, any income derived from funds so placed arises from the business carried on by it and the assessee has not, by reason of section 80P(2)(a)(i), to pay income-tax thereon. The placement of such funds being imperative for the purposes of carrying on the banking business, the income derived therefrom would be income from the assessee's business. We are unable to take the view that found favour with the Bench that decided the case of Madhya Pradesh Co-operative Bank Ltd. [1996] 218 ITR 438 (SC) that only income derived from circulating or working capital would fall within section 80P(2)(a)(i). There is nothing in the phraseology of that provision which makes it applicable only to income derived from working or circulating capital. In the premises, we take the view that the decision of this court in the case of Madhya Pradesh Co-operative Bank Ltd. [1996] 218 ITR 438 (SC) does not set down the correct law and that the law is as we have put it above."

6. The learned counsel for the assessee relies on the recent judgment of the Supreme Court in United Commercial Bank Vs. Commissioner of Income-tax, [1999] 240 ITR 355, wherein the Apex Court, after reiterating that the principles applicable in valuation of stock are:

> "(1) that for valuing the closing stock, it is open to the assessee to value it at the cost or market value, whichever is lower;
>
> (2) In the balance-sheet, if the securities and shares are valued at cost, from that no firm conclusion can be drawn. A taxpayer is free to employ for the purpose of his trade, his own method of keeping accounts, and for that purpose, to value stock-in-trade either at cost or market price;
>
> (3) A method of accounting adopted by the taxpayer consistently and regularly cannot be discarded by the Departmental authorities on the view that he should have adopted a different method of keeping accounts or of valuation;

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(4) The concept of real income is certainly applicable in judging whether there has been income or not, but, in every case, it must be applied with care and within recognised limits;

(5) Whether the income has really accrued or arisen to the assessee must be judged in the light of the reality of the situation;

(6) Under section 145 of the Act, in a case where accounts are correct and complete but the method employed is such that in the opinion of the Income-tax Officer, the income cannot be properly deduced therefrom, the computation shall be made in such manner and on such basis as the Income-tax Officer may determine,

held that,

"... the appellant followed the mercantile system of accounting both for book keeping purpose as well as for tax purposes. The appellant consistently and for over 30 years prior to the assessment year in dispute (1982-83) had been valuing its stock-in-trade (investments) "at cost" in the balance-sheet whereas for the same period of time the appellant had been valuing the very same investment "at cost or market value whichever is lower" for income-tax purposes. That practice was accepted by the Department and there was no justifiable reason for not accepting the same. From the form of the prescribed balance-sheet under the Banking Regulation Act it was evident that scheduled nationalised banks were directed to put the value of shares and securities at cost and if the market value was lower, it was to be shown separately in brackets. Preparation of the balance-sheet in accordance with the statutory provision would not disentitle the assessee in submitting income-tax return on the real taxable income in accordance with a method of accounting adopted by the assessee consistently and regularly. That could not be discarded by the Departmental authorities on the ground that the assessee was maintaining the balance-sheet in the statutory form on the basis of the cost of the investments. In such cases, there was no question of following two different methods for valuing its stock-in-trade (investments) because the bank was required to prepare the balance-sheet in the prescribed form and it had no option to change it. For the purpose of income-tax what is to be taxed is the real income which is to be deduced on the basis of the accounting system regularly maintained by the assessee and that was done by the assessee in the present case."

7. This Court, in the case of Commissioner of Income-tax Vs. Karur Vysya Bank Ltd. [2005] 273 ITR 510, to which one of us is a party (P.D.DINAKARAN,J.), held that the Government Securities held by the assessee-Bank have to be treated as stock-in-trade and not

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investment by following the Supreme Court judgment in [1999] 240 ITR 255. In view of the above reasoning of the Supreme Court, we are of the view that the Government Securities held by the assessee are stock-in-trade.

8. Further, we have seen from the order of the Tribunal that for the earlier year, the Tribunal decided the case in favour of the assessee. When the Tribunal decided the case in favour of the assessee on identical facts, it is not proper for the Tribunal to take a different view for the subsequent years. In the case of Commissioner of Income-tax Vs. Ramamurthi (L.G.), [1977] 110 ITR 453, it is held as follows:

> "No Tribunal of fact has any right or jurisdiction to come to a conclusion entirely contrary to the one reached by another Bench of the same Tribunal on the same facts. It may be that the members who constituted the Tribunal and decided on the earlier occasion were different from the members who decided the case on the present occasion. But what is relevant is not the personality of the officers presiding over the Tribunal or participating in the hearing but the Tribunal as an institution. If it is to be conceded that simply because of the change in the personnel of the officers who manned the Tribunal, it is open to the new officers to come to a conclusion totally contradictory to the conclusion which had been reached by the earlier officers manning the same Tribunal on the same set of facts, it will not only shake the confidence of the public in judicial procedure as such, but it will also totally destroy such confidence. The result of this will be conclusions based on arbitrariness and whims and fancies of the individuals presiding over the courts or the tribunals and not reached objectively on the basis of the facts placed before the authorities.
>
> If a Bench of a Tribunal on the identical facts is allowed to come to a conclusion directly opposed to the conclusion reached by another Bench of the Tribunal on an earlier occasion, that will be destructive of the institutional integrity itself. That is the reason why in a High Court, if a single judge takes a view different from the one taken by another judge on a question of law, he does not finally pronounce his view and the matter is referred to a Division Bench. Similarly if a Division Bench differs from the view taken by another Division Bench it does not express disagreement and pronounce its different views, but has the matter posted before a Fuller Bench for considering the question. If that is the position even with regard to a question of law, the position will be a fortiori with regard to a question of fact. If the Tribunal wants to take an

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opinion different from the one taken by an earlier Bench, it should place the matter before the President of the Tribunal so that he could have the case referred to a Full Bench of the Tribunal consisting of three or more members for which there is provision in the Income-tax Act itself."

9. In the light of the aforesaid decision of this Court, it is clear that the Tribunal completely erred in coming to the conclusion it did, at variance with and opposed to the conclusion of the Tribunal on the earlier occasion.

In view of the foregoing conclusion, we answer the questions of law (1) and (3) in favour of the assessee. As we have answered question of law (1), it becomes unnecessary to answer the questions of law (2), (4) and (5).

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To:

1. The Assistant Registrar,
   Income-tax Appellate Tribunal,
   III Floor,
   Rajaji Bhavan, Besant Nagar,
   Chennai 600 090.

2. The Commissioner of Income-tax
   Tamil Nadu V, Madras.34

3. The Commissioner of Income-tax (Appeals), VIII
   Madras. 34

4. The Commissioner of Income-tax (Appeals),
   Madurai Range, Madurai.

5. The Deputy Commr. Of Income-tax, Spl. Range,
   Trichy.

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6. The Inspecting Assistant Commissioner
of Income Tax (Assessment) Range II, Madurai.

2 ccs to Mr.N.Muralikumaran, Senior Standing Counsel, Sr. 5186 & 5187
1 cc to Mr.T.C.A. Ramanujam, Advocate, Sr. 5420

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